DOCUMENT RESUME

ED 201 577 SO 013 336

TITLE How to Plan and Conduct a Mock Trial: Civil Trial.
INSTITUTION Missouri State Bar Association, Jefferson City.
PUB DATE Apr 81
NOTE 41p.

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Judges; Lawyers; *Legal Education; Role Playing; Secondary Education
IDENTIFIERS Missouri; *Mock Trials

ABSTRACT

This document contains resources and suggested steps to help secondary teachers organize and conduct a mock trial. Although written specifically for use in Missouri, the document can easily be used and adapted by teachers in other states. The authors believe that a mock trial is a valuable learning experience in many ways. It may be used to help students learn about specific areas of the law, courtroom procedures, roles of courtroom personnel, and how U.S. courts resolve conflicts peacefully. The first section of the document describes "The Order of a Civil Trial in Missouri" including jury selection, beginning the trial, opening statements, presenting the evidence, jury instructions, final arguments, and jury deliberation. A statement is presented of facts for a landlord-tenant case study--"W.B. Walker v Cynthia Jones." Resources and background information needed for students to participate in this mock trial are provided. For example, documents are listed which the plaintiff and his attorney will need, such as notice to quit and summons. Some cardinal rules used in cross-examining a witness are provided for students who role play the attorneys in the trial. A chart depicting the courtroom seating arrangement is provided to help the clerk check before the trial to see that the courtroom has been set properly. The document concludes with a general discussion of how to prepare for mock trials and other legal proceedings including appellate hearings and administrative hearings. Simplified rules of evidence which the students can use in this mock trial are also presented.
(Author/RM)

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HOW TO PLAN & CONDUCT A MOCK TRIAL: CIVIL TRIAL.

The Missouri Bar

SO 013 336

CONDUCTING A CIVIL TRIAL

Rev. 4/81

ACKNOWLEDGEMENTS

"The Order of a Civil Trial in Missouri" outline reprinted from Chapters 8, 9, 10, 11, 13 and 14 of Missouri Civil Trial Practice, published by The Missouri Bar as part of the Continuing Legal Education program.

"How to Prepare for Mock Trials and Other Legal Proceedings" and "Simplified Rules of Evidence" were provided by National Street Law Institute, 605 G Street, N.W., Washington, D.C. 20001, and were used in conjunction with its 1979 Mock Trial Competition.

Portions of Activity #214 from The Missouri Bar Advisory Committee on Citizenship Education's law-oriented curriculum guide, The Role of Law in a Free Society and the Rights and Responsibilities of Citizenship, were incorporated into the article "Information for Mock Trial Participants."

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WHY A MOCK TRIAL

A mock trial is a valuable learning experience[1] in many ways.

It may be used to help students learn about:

- Specific areas of law.
- Courtroom procedures.
- Roles of courtroom personnel.
- How U.S. courts resolve conflicts peacefully.

They may also be used to help students develop certain important skills:

- Logical thinking (relating evidence to arguments, considering consistency of arguments, evaluating alleged cause-and-effect relationships, etc.)
- Listening skills.
- Speaking skills, with emphasis on advocacy, persuasion, and presenting a line of ideas in a well organized manner.
- Research skills.

There are other positive results of mock trials:

- They challenge students.
- They encourage field trips and use of resource persons (visits to court houses and visits by judges and attorneys are a natural accompaniment to mock trials.)
- They are fun.

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[1]To help assure accuracy in the way the trial is conducted, the teacher may need to consult with an attorney as a resource person. The Missouri Bar can help make contacts between teachers and attorneys. Contact the Field Director, Missouri Bar Advisory Committee on Citizenship Education, The Missouri Bar, P. O. Box 119, Jefferson City, MO 65102 (314) 635-4128

THE ORDER OF A CIVIL TRIAL IN MISSOURI*

I. JURY SELECTION

A. Constitutional Rights

The right to trial by jury in civil cases is contained in the Seventh Amendment of the Constitution of the United States:

> In suits at common law, where the value in controversy shall exceed $20.00, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined by any court of the United States, than according to the rules of the common law.

and in the Missouri Constitution of 1945, Art. I, Sec. 22(a):

> That the right of trial by jury as heretofore enjoyed shall remain inviolate; provided that a jury for the trial of criminal and civil cases in courts not of record may consist of less than twelve (12) citizens as may be prescribed by law, and a two-thirds' (2/3) majority of such number concurring may render a verdict in all civil cases; that in all civil cases in courts of record, three-fourths (3/4) of the members of the jury concurring may render a verdict; and that in every criminal case, every defendant may, with the consent of the court, waive a jury trial and submit the trial of such case to the court, whose findings shall have the force and effect of a verdict of a jury.

Article I, Sec. 22(a) of the Constitution of Missouri, 1945, has been interpreted to mean that a party litigant in a civil case is entitled to twelve (12) impartial and qualified jurors unless he waives that right. In Missouri, only by agreement of both the plaintiff and defendant can a jury be waived.

B. Voir Dire Examination

The words "voir dire" are French in derivation and mean generally the oath to speak the truth. To determine whether or not each juror has under his oath the ability to speak the truth is determined during the process of questioning, examining and challenging jurors before trial in a particular case. The words "impaneling a jury" cover all steps in ascertaining who shall be the twelve (12) jurors to sit as

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*Parts of this outline are reprinted from Chapters 8, 9, 10, 11, 13 and 14 of Missouri Civil Trial Practice, published by The Missouri Bar as part of the Continuing Legal Education program.

the jury in a case and more specifically mean the final formation of the jury by the court preceding the oath administered to the jurors. It is the duty of a panel member on voir dire examination to fairly and truthfully answer all questions directed to him. The questions asked by the attorney are not intended to pry into the personal life of the panel member, but rather to determine his qualifications to sit as a juror.

Generally, the purpose of voir dire is to:

a. advise the jury generally of the facts and evidence to be presented on behalf of the client to determine what juror may be unduly prejudiced by such evidence.
b. advise all jurors generally that instructions pertaining to the law in the case will be given them by the court at the close of the case and make inquiry as to whether or not all jurors can follow the law in the case as given by the court, paying particular attention to jurors who may have preconceived ideas about the law in the particular case being tried.
c. determine who on the jury panel cannot be qualified to serve; to choose an impartial jury.

After the voir dire examination is completed, both the plaintiff and the defendant have an opportunity to "strike," or eliminate certain panel members. Selecting a jury is the process of elimination, rather than a process of selection, since jurors are stricken rather than chosen. All jurors are presumed eligible until stricken. Those panel members that do not serve are excused and are free to leave. It is no reflection on the integrity or intelligence of the person to be excused.

II. BEGINNING THE TRIAL

A. Clerk: The Court of (city, state) is now open and in session, the Honorable Judge _____ presiding. All persons having business before the court come to order!
Case of (title of case)
Is the plaintiff ready? (let Plaintiff's Attorney answer.)
Is the defendant ready? (let the Defense Attorney answer.)
Your Honor, may the jury be brought in? (Let the judge answer.)

The Clerk fills the jury box with members of the jury. Then, the jurors are sworn in as follows:

B. Clerk: The jurors will rise, raise their right hands and be sworn. Do you solemnly swear that you will well and truly try the issues now to be given you? That you will speak nothing to anyone of the business or matters you have in hand, but among yourselves; nor will you suffer anyone to speak to you about the same but in Court; and when you are agreed upon any verdict, you will keep it secret until you deliver it up in Court? Do you all so swear? (let the jurors say "I do").

C. Judge [Missouri court procedures require that the judge give the following instruction to the jury]:

INSTRUCTION NO. 1

Justice requires that you not make up your mind about the case until all of the evidence has been seen and heard. You must not comment on or discuss what you may hear or learn in the trial until the case is concluded and you retire to the jury room for your deliberations. During the trial, you should not remain in the presence of anyone who is discussing the case when the court is not in session. Otherwise, some outside influence or comment might influence a juror to make up his or her mind prematurely and be the cause of a possible injustice. For this reason, the lawyers and their clients are not permitted to talk with you until the trial is completed.

When you enter into your deliberations, you will be considering the testimony of witnesses as well as other evidence to which I have referred. In considering the weight and value of the testimony of any witness, you may take into consideration the appearance, attitude, and behavior of the witness, the interest of the witness in the outcome of the case, the relation of the witness to any of the parties, the inclination of the witness to speak truthfully or untruthfully, and the probability or improbability of the witness' statements. You may give the testimony of any witness such weight and value as you believe that testimony is entitled to receive.

There will be some matters which will be offered by the parties and to which objections will be made. If I overrule the objections, you may consider that matter when you deliberate on the case. If I sustain an objection, then that matter and any matter I order to be stricken is excluded and must not be considered by you in your deliberations.

INSTRUCTION NO. 2

This instruction and other instructions which I will read to you near the end of the trial are in writing, and all of the written instructions will be handed to you for guidance in your deliberation when you retire to the jury room. They will direct you concerning the legal rights and duties of the parties and how the law applies to the facts which you will be called upon to decide.

The trial may begin with opening statements by the lawyers as to what they expect the evidence to be. At the close of the evidence, the lawyers may make arguments on behalf of their clients. Neither what is said in opening statements or in closing arguments is to be considered as proof of a fact. However, if a lawyer admits some fact on behalf of his client, the other party is relieved of the responsibility of proving that fact.

After the opening statements, the plaintiff will introduce evidence. After that, the defendant may introduce evidence and there may be rebuttal evidence after that. The evidence may include the testimony of witnesses who appear personally here in court, the testimony of witnesses who may not appear personally but whose testimony may be read to you, and exhibits such as pictures, documents, and other objects.

While the trial is in progress, I may be called upon to determine questions of law and to decide whether these matters may be considered by you under the law. No ruling or remark which I may make at any time during the trial will be intended or should be considered by you to indicate my opinion as to the facts. There may be times when the lawyers come up to talk to me out of your hearing. This will be done in order to permit me to decide questions of law. These conversations will be out of your hearing to prevent issues of law, which I must decide, from becoming mixed with the issues of fact, which you must decide. We will not be trying to keep secrets from you.

After all of the evidence has been presented, and you have received my final instructions and heard the closing arguments of the lawyers, you will retire to the jury room for your deliberations. At that time, it will be your duty to select a foreman, to decide the facts, and to arrive at a verdict.

III. OPENING STATEMENTS BY THE PLAINTIFF'S ATTORNEY AND THE DEFENDANT'S ATTORNEY (Five minute maximum each)

The purpose of the opening statement is to generally inform the judge and jury of the nature of the suit so as to enable them to better understand the evidence as it is presented. The opening statement is not evidence, but rather is an outline of what the attorneys expect the testimony to show. Phrases such as "We believe the evidence will prove," and "We expect the evidence to show" should be used. Statements of counsel of what he expects to prove are not admissions.

Argument during an opening statement is improper. A statement can be persuasive without being argumentative.

IV. PRESENTING THE EVIDENCE[1]

A. In civil trials witnesses for the plaintiff are all examined, cross-examined, and recross-examined before the witnesses for the defense testify.

B. Before each witness takes the witness stand to answer questions for the first time, the clerk should swear him in. Ask the witness to put his left hand on the Bible, raise his right hand and answer the question, "Do you swear, or affirm, that the testimony you give relating to the matter in issue between _____, plaintiff, and _____, defendant, shall be the truth, the whole truth and nothing but the truth?"

C. Direct Examination

This is the attorney's initial opportunity to examine his witness. Council must elicit all the facts needed to prove the case. He should know exactly what facts he wishes to elicit, and what questions are necessary to show those facts.

The facts may be elicited by oral testimony, documentary or physical evidence. Presentation of the facts should be in a clear, concise, and orderly manner and should be limited to relevant and material facts and issues. Irrelevant questions and questions about insignificant matters should be avoided.

Outlines of the necessary elements of the case, of witness testimony and documentary evidence are particularly helpful in preparing a case for trial.

The form of the question must be direct and cannot be "leading" or suggest the answer desired. An example of a direct or non-leading question would be "Mr. Smith, when did you first meet Mr. Jones?"

D. Cross-Examination

A party to an action against whom a witness has been called and given testimony is entitled to cross-examine the witness on the subject matter of the entire case.

Cross-examination is important, as it can expose inaccuracies, bias, half-truths and general unreliability. Without cross-examination, the adversary system would be weak and ineffective.

The form of the questions can be "leading" or suggest the desired answer. An example of a leading question would be "Mr. Smith, you have known Mr. Jones for a long time, haven't you?"

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[1]See "Simplified Rules for Evidence," pp. 25-29 to follow.

E. Redirect and Recross-Examination

The first attorney can use redirect examination to clarify points developed on cross-examination. The scope of redirect is limited to new issues raised on cross-examination. If there is no cross-examination, there can be no redirect.

Recross-examination by the second attorney is limited to new points raised on redirect. If there is no redirect examination, there can be no recross.

V. JURY INSTRUCTIONS

After all the witnesses have appeared and testified for both the Plaintiff and the Defense, the Clerk will rise and announce, "The Court will now charge the jury. No one will be allowed to leave or to enter the room during the charge."

The Missouri Supreme Court has mandated the use of a set of instructions known as Missouri Approved Instructions, or MAI. These instructions are the universal pronouncements of the applicable law, and are read to the jury by the judge immediately before the closing arguments. The jury is then free to decide the ultimate issue without specific findings of evidentiary facts.

INSTRUCTION NO. 3

The court does not mean to assume as true any fact referred to in these instructions but leaves it to you to determine what the facts are.

INSTRUCTION NO. 4

The burden is upon plaintiff to cause you to believe the propositions necessary to support his claim against defendant. In determining whether or not you believe any proposition, you must consider only the evidence and the reasonable inferences derived from the evidence. If the evidence in the case does not cause you to believe a particular proposition submitted or if you are unable to form a belief as to any such proposition, then you cannot return a verdict requiring belief of that proposition.

INSTRUCTION NO. 5

If you find the issues in favor of plaintiff then you must award the plaintiff such sum as you may find from the evidence will fairly and justly compensate plaintiff for deprivation of possession of the property from the date defendant had notice of plaintiff's claim to possession to the date of your verdict.

INSTRUCTION NO. 6

Your verdict must be for plaintiff if you believe:

First, defendant was in possession of the premises claimed by plaintiff on _____, 19__, and;

Second, plaintiff had the right to possession of the premises on that date by reason of termination of month-to-month tenancy.

INSTRUCTION NO. 7

You are instructed that nine or more jurors may return a verdict for either party in this case. If all of you agree upon a verdict, your foreman alone will sign it, but if your verdict is returned by nine, or more, and less than twelve jurors, your verdict must be signed by all of the jurors who agree to it.

FORMS OF VERDICT

If all of you agree upon a verdict in favor of the plaintiff, it may be in the following form:

"We, the jury, find the issues in favor of the plaintiff, and assess plaintiff's damages at $_____(stating the amount).

_____
Foreman"

If all of you agree upon a verdict in favor of the defendant, it may be in the following form:

"We, the jury, find the issues in favor of the defendant.

_____
Foreman"

If less than twelve jurors return a verdict, you should begin your verdict with the words:

"We, the undersigned jurors, find," etc., instead of "We, the jury, find," etc.

THESE FORMS ARE GIVEN FOR GUIDANCE ONLY AND YOUR VERDICT SHOULD BE WRITTEN ON A SEPARATE PAPER, AND NOT ON ONE OF THESE INSTRUCTIONS.

VI. FINAL AGRUMENT

In a trial before a jury, a party has a right to have his case fully and fairly argued to the jury. The right to make the opening final argument is very valuable. Usually the party with the burden of proof (the plaintiff) has the right to open the argument. The defendant then has an opportunity to argue

his case, followed by plaintiff's rebuttal if the plaintiff has reserved time for rebuttal.

While the scope of argument is broad, counsel may not go beyond the issues and urge prejudicial or inflammatory matters. Neither may counsel urge a theory of recovery or defense which is not supported by the evidence or which conflicts with the court's instructions to the jury.

The party seeking monetary recovery must mention specific dollar amounts sought in his opening argument or be barred from arguing them in the closing segment of the final argument.

It is always proper in final argument to refer to a witness' interest in the outcome of the suit, his appearance and conduct while testifying, and the character and credibility of parties and witnesses when the remarks are based on facts in evidence.

The final argument should tie the whole case together so that the jurors receive the impression that the attorney's case has gone full circle and is now back where it started. The jury should conclude that the attorney knew where he was going all along and finally got there.

Organization and preparation are essential. Sometimes it is useful to plan the final argument before the trial begins and then tailor the trial to the outline of the argument. Reference to the opening statement is a good method of "closing the circle" late in the case.

Rebuttal by the plaintiff is a necessary but hazardous task. The hazard lies in a too vigorous rebuttal; it must appear that the plaintiff remains on the offensive and not the defensive.

VII. JURY DELIBERATION

Nine or more jurors must agree upon the verdict in favor of the plaintiff or the defendant.

STATEMENT OF FACTS

W. B. Walker v. Cynthia Jones
(a landlord-tenant case)

Cynthia Jones rented an apartment at 437 Oak Street in August, 1979. Her lease was a month-to-month lease which began September 1, 1979.

On January 20, 1980, she received a letter from the owner of the building, W. B. Walker, saying that she was being given legal notice to quit (or leave) her apartment and that she had to move out by March 1, 1980. No reason was given by Walker for this notice.

Ms. Jones did not move out and on March 5, 1980, she received a summons saying that Mr. Walker is requesting the landlord-tenant court to order that she be evicted from her apartment. This summons is based on the fact that she was given a 30-day notice to leave and that she did not do so.

Ms. Jones has obtained the aid of legal aid attorneys who have told the court that she is being evicted illegally in retaliation for her reporting of housing violations and because she helped form a tenant union in the building. Walker's attorneys claim that this situation involves an ordinary legal 30-day notice to quit and that it is not a retaliatory eviction. They say that Ms. Jones is being evicted because she is a troublesome tenant who, in particular, one night pounded on the wall of her apartment throughout the night disturbing other tenants. Ms. Jones' attorneys claim she was doing this to protest the lack of heat.

A date has been set for trial to be held in the local courtroom.

Witnesses for Plaintiff (Walker)	Witnesses for the Defense (Jones)
W. B. Walker (plaintiff/landlord)	Cynthia Jones (defendant/tenant)
George Barker (resident manager)	C. R. Smith (housing inspector)
Beverly Miller (tenant)	Jimmy Harper (tenant)

RESOURCES NEEDED FOR MOCK TRIAL

Role Players

W. B. Walker - landlord/plaintiff
Cynthia Jones - tenant/defendant
Beverly Miller - witness for plaintiff; tenant currently living in Mr. Walker's apartments.
George Barker - witness for plaintiff; resident manager employed by Mr. Walker.
Jimmy Harper - witness for defendant; tenant currently living in Mr. Walker's apartments; boyfriend of Cynthia Jones
C. R. Smith - expert witness for defendant; housing inspector employed by city.

Attorney for plaintiff
Attorney for defendant
Judge
Jury (12-member)
Bailiff
Court Clerk

Documents Needed

By plaintiff and his attorney

Notice to quit - must be dated; quit by March 1 giving legal notice to quit; no reason given.

Summons, dated March 5

By defendant and her attorney

Notice of defects - letter must be dated November 15; listing of specific violations

Notice of Housing Code violation - dated January 18; signed by housing inspector, C. R. Smith, listing specific violations.

Petition of Grievances, dated January 8

Applicable Law

King v. Morehead, 495 S.W. 2d 65 (Mo. App. 1973)

City of St. Louis v. Brune, 515 S.W. 2d 471 (banc 1974)

Chapter 441, Revised Statutes of Missouri, 1978

Chapter 494, Revised Statutes of Missouri, 1978

See also The Missouri Bar's ACCE Curriculum Guide, Appendix, "Housing Law."

INFORMATION FOR MOCK TRIAL PARTICIPANTS

Information for Attorneys

The case of Walker v. Jones, a landlord's suit for eviction of a tenant and for possession of the premises, presents a host of problems. When and if to call a witness, what the witness should say, when and how to cross-examine are just some of the problems that this case presents. This outline will, hopefully, clarify the issues and solve some of those problems by placing the entire case in a perspective more understandable to both attorneys and witnesses. Note that the trial presentation is divided into four sections: (1) opening statement; (2) examination of witnesses; (3) cross-examination of witnesses including rebuttal witnesses; and, (4) summation (closing argument).

Here are some cardinal rules used in examination of cross-examining a witness:

(1) Never ask a question of your witness unless you know the answer. A surprise question with a surprise answer could severely damage your case.

(2) Don't let the witness ramble on. Know when to stop and go on to the next question. Also, the shortest answer is the best answer.

(3) Ask the question so that the witness must give an answer. If the witness refuses to answer, the judge may tell the witness to answer the question.

(4) On cross-examination, know when to stop asking questions. When the witness has told you what you want to know, stop there!

Specific Information for the Plaintiff's Attorney

As Plaintiff's Attorney your job is to present the evidence against the Defendant. Your job consists of four main parts:

(1) Opening Statement to the Jury - Immediately after the jury has been seated and sworn in you will have a chance to make a five minute summary of what you think the evidence in the case will show. This should include your briefly telling the jury the facts of the case in a light favorable to your client, indicating what the jury should expect in the trial, and a statement for why the jury should rule in favor of the landlord.

(2) Direct Examination - After the Defense Attorney has had a chance to make his opening statement, you will begin with a direct examination of your witnesses. This means that each of your witnesses will be sworn in, one at a time, and you will have a chance to ask them questions. Each question you ask them should give them a chance to tell a fact about the case. You should have a good idea what they will answer to each question and you should ask questions that will produce answers that can be useful to your case.

The witnesses will probably be called in the following order:

(a) Landlord (W. B. Walker) will be called by plaintiff's attorney. Walker will testify about the lease and offer a copy of the lease into evidence. He will also testify about his desire to evict Cynthia Jones and offer into evidence the 30-day notice of eviction. (Remember, in a month-to-month tenancy no reason for eviction is necessary, but landlord must give 30 days notice.)

(b) Resident manager (George Barker) will be called to support landlord's desire to evict Cynthia Jones. Barker will testify to tenant's disturbing behavior, banging on walls, yelling in middle of night, etc. He will also testify as to his efforts to repair by contacting the plumber. Defense attorney may want to cross-examine to impeach (destroy a witness's believability) Barker's testimony by showing that he is an enept and inefficient resident manager.

(c) Beverly Miller may be called to testify to support what Barker says about Cynthia Jones.

The Defense Attorney will have a chance to "cross-examine" your witnesses - that is, to ask your witnesses questions after you have finished with them.

(3) Cross-Examination - When all of your witnesses have been questioned by both you and the defense attorney, the defense attorney will have an opportunity to present his witnesses. He will begin by asking them questions, and then you will have a right to "cross-examine" them. The purpose of the cross-examining witnesses is to get additional explanations of some of their earlier answers. For example, if the witness only told half of what happened when the defense attorney questioned him, you may want to question him about the other half.

(4) Closing Argument - After the defense attorney has presented all his witnesses and you have had a chance to ask them questions, it will be time for "closing argument." Your argument will come before that of the defense attorney. You will have ten minutes for a closing statement. In this part of the trial you should try to summarize the relevant facts and cite from the law cases to support why the jury should rule in favor of the landlord. Attorney may want to point out the weaknesses in tenant's case, what she failed to prove, etc. The plaintiff's attorney may wish to reserve a portion of his ten minutes for rebuttal, after the defendant's closing argument. The plaintiff's attorney may want to object to certain questions of the defendant's attorney if he feels the questions violate the rules of evidence (see pp. 25-29).

Specific Information for the Defendant's Attorney

As the defendant's attorney your main job is to show that the plaintiff's attorney does not have enough evidence to obtain a decision in favor of his client because it cannot be depended upon, because it doesn't make sense, or

because some of the witnesses disagree with each other. Your job consists of four main parts:

(1) Opening Statement to the Jury - After the plaintiff's attorney has made his opening statement you will have five minutes to summarize what you think the evidence in the case will show. You should try to emphasize that you think there are disagreements between the witnesses or that there simply isn't enough evidence to prove that the defendant was in the wrong.

(2) Cross-Examination - The plaintiff's attorney will have the first opportunity to question his witnesses. At the end of his questioning of each witness, you will have a chance to ask that witness questions. Listen carefully to what the witness says. See if you can find something that he said that you think doesn't make sense, and ask him about it. The purpose of cross-examining witnesses is to find out if some answers they gave to questions asked by the plaintiff's attorney need additional explanation. For example, if the witness only told half of what happened you might want to ask him to explain the rest.[1]

(3) Direct Examination - When the plaintiff's attorney has finished presenting all his witnesses you will have a chance to present your witnesses. This is called the "direct examination." Your job here is to ask the witnesses questions that will let them tell their story. After you have questioned each witness, the plaintiff's attorney will have a chance to cross-examine.

The witnesses on your side may be called in the following order:

(a) Tenant (Cynthia Jones) will be called by her attorney. Her defense of retaliatory eviction will be brought out by explaining when she discovered housing code violations (chipped paint, broken window pane, leaky faucet, etc.), notification of these problems to landlord (offer into evidence letter to landlord of 11/15/79), landlord's and resident manager's delay in making repairs, tenant's circulating a petition among other tenants telling landlord to make these repairs (offer into evidence "Petition of Grievances". . . of 1/18/80) and calling in housing inspector to inspect premises for violations. Cynthia Jones will be trying to present herself as a decent, law abiding, and responsible tenant who is merely trying to live in a habitable apartment. Landlord's attorney may cross-examine Cynthia to try to impeach her.

(b) Housing Inspector (C. R. Smith) will be called by tenant's attorney. After having been qualified as an expert witness, the housing inspector will testify to the number and seriousness of the violations on the premises (offer into evidence "Notice of Housing Violations" of 1/18/80). Landlord's attorney will probably not cross-examine this witness.

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[1]The defendant's attorney may want to object to certain questions asked by the plaintiff's attorney if he feels the questions violate the rules of evidence (see pp. 25-29 to follow).

(c) Jimmy Harper (Cynthia's boyfriend and fellow tenant) may be called by tenant's attorney to rebut what Barker and Miller have said about Cynthia. Harper can also be used to reinforce the presence of the violations, the failure of the landlord and the resident manager to make the necessary repairs within a reasonable time, and his opinion of Barker's incompetence. Harper will surely be cross-examined to bring out his "intimate" relationship with Cynthia Jones.

(4) Closing Argument - When you have completed your questioning of the witnesses, the plaintiff's attorney has finished cross-examining, and the judge has given instructions to the jury, each attorney will have a chance to make a closing argument. You make your agrument second. You have ten minutes. You should try to summarize the main points that your witnesses brought out that would support the jury ruling in favor of your client, Cynthia Jones.

Information for Witnesses

As a witness your job is to tell the members of the jury what you believe happened according to what you actually saw and heard.

You will find that both the plaintiff's attorney and the defendant's attorney will be asking you questions. If you are a witness for the plaintiff, the plaintiff's attorney will start; if you are a witness for the defendant, the defendant's attorney will begin the questions. After the first lawyer has asked his questions, the other will be able to ask you questions.

Prior to the trial the attorney of the party that has called on you as a witness will discuss with you what questions he will ask and the order in which he will ask the questions. Be certain to keep to the facts as you and he discussed them when you are on the witness stand.

Information for the Judge

Your job as judge in this trial is to make sure that the procedure of a trial is followed so that both sides have a chance to present their cases. An important job of the judge is to rule on objections raised by attorneys. To give appropriate responses, familiarize yourself with "Simplified Rules of Evidence" on pp. 25-29. One of your main jobs is to give instructions to the jury before the closing arguments have been made. Information about the sequence of events in the trial and about what instructions you need to give to the jury is all presented in "The Order of a Trial in a Civil Case in Missouri," which may be found above on pp.

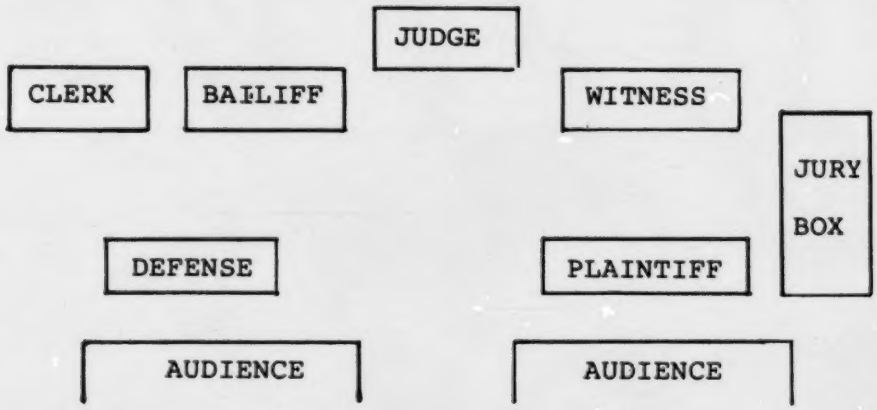
The purpose of giving instructions to the jury is to tell the jurors what the law is. They are supposed to be guided by the law in making their decisions in this case as to the facts and you have to help them find out what the law is.

After the jury has made its decision, you should ask the foreman to rise and tell the class what the verdict is. Once the verdict has been announced, you can tell the class that the trial is over.

Information for the Clerk

1. Assist the teacher in the direction of the trial.

2. Check before the trial to see that the courtroom has been set properly.



3. Bring a watch to the trial and assist in enforcing time limits.

4. Bring the Court to order by reading the official Opening of the Court and swear in the witnesses (see "Beginning the Trial" on p. 3 and "Presenting the Evidence," Part B, on p. 6.

Information for the Jury

The teacher might want the jury in this case to work a little differently from the way a jury works in a real case. That is, the teacher might want the jury to come to its decision in front of the whole class. In a real trial, such a decision would be made in secret.

While the witnesses are being questioned and giving their answers, you should pay close attention to what is said. Be careful to see whether the witness's story makes sense. Try to remember how the story of one witness compares with the story of another witness. If they don't seem to fit together or if one of the witnesses seems to be making a mistake, you should try to remember that.

The judge will give you instructions. The instructions will tell you what the law is for this case. Then listen to the closing argument of both attorneys.

After the closing arguments, you should start your deliberations. You might take a vote at the beginning to see what each member of the jury thinks about the case. Then you can begin to talk about the witnesses. Each member

of the jury can tell in one or two sentences what he thinks about the witnesses' evidence. Which witnesses did you believe? Which ones did you not believe? Why?

Here, the teacher might ask you a few questions to help you reach a decision. Take another vote. After three votes, you should have come to a final decision. In a real civil case, the vote must be at least three-fourths (9 votes) in agreement. (In this case, if you can't get the proper verdict, then the majority will rule, if your teacher so instructs you.)

Foreman: Your job is to conduct the votes. After the third vote, you should tell the jury that the decision is made, and you should indicate to the judge that the jury is ready to give its verdict. When the judge asks you for the verdict, you should rise and tell him the answer.

HOW TO PREPARE FOR MOCK TRIALS AND OTHER LEGAL PROCEEDINGS[1]

A. Mock Trials

There are different approaches to conducting mock trials. Some teachers may prefer to conduct formal trials by assigning roles ahead of time, having students prepare written questions, and strictly adhering to the rules of evidence. The sample trials in this kit are appropriate for conducting formal trials.

Other teachers may prefer to simulate a Small Claims or Pro Se Court where procedures are less formal and citizens may appear without an attorney. Such a trial may adhere less strictly to the rules of evidence, may delete the more formal steps in the trial such as motions, objections, and/or opening and closing statements, and may be conducted more like a hearing where the two parties have been brought together to tell their versions of the dispute.

Since student learning is the ultimate goal of a mock trial exercise, students should be as involved in preparation for the mock trial as they are in playing roles in the actual simulation. Preparation for a mock trial includes development of the issues, formulation of the questions to be asked and preparation of the opening and closing statements. The teachers, where possible with the help of a lawyer or law student, should guide and direct trial preparation but should not spoonfeed questions or have students make statements or arguments which they do not fully understand.

The following are some suggested steps for organizing and conducting a mock trial:[2]

1. Select mock trial materials

Teachers may prefer to use one of the trials in this kit or to develop their own materials. The trials in this kit require more than one class day for preparation and execution.

2. Distribute the materials to the class

If possible, the entire class should receive a complete set of trial materials. This will enable each student to understand the entire trial, to prepare for examination of the witnesses, and to prepare evidence in anticipation of the case.

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[1] This information was provided by National Street Law Institute, 605 G Street, N.W., Washington, D.C. 20001.

[2] Most of the suggested steps and information in this section are geared specifically to the teacher who is preparing students for a more formal in-class trial. Teachers who prefer an informal type Small Claims Court Trial should adapt them to meet their objectives.

3. Discuss the trial process with the class

   a. The teacher should discuss the following with the class:

      (1) steps in a trial;

      (2) burdens of proof;

      (3) preparation of questions for witness examination;

      (4) the role of each participant;

      (5) basic rules of evidence;

      (6) the applicable law in the case.

   b. Depending on the extent to which the teacher wishes to leave preparation to the students, the teacher may also wish to conduct a class discussion on the following:

      (1) summary of facts in the case;

      (2) principal issues of fact and law in the case;

      (3) key points each side should try to emphasize;

      (4) specific questions to ask witnesses on direct and cross-examination; and

      (5) possible objections to questions asked by the other side.

   c. The teacher may go over each witness statement with the entire class, or students may do this themselves in groups. If the teacher desires each statement may be used as a sworn affidavit of the witness and student witnesses may sign their statements as if they were pre-trial declarations. This will enable the attorney for the opposing side to refer to each respective witness statement during the trial, comparing it to the witness' present testitmony on cross examination. However, the teacher should tell the students that testimony inconsistent with facts in the witness statement is not permissible.

4. Use of student groups for trials

Having students work in groups is a particularly good way to prepare them for roles in a mock trial. Break the class into two principal teams: (1) a prosecution or plaintiff team and (2) a defense team. Designate students to be attorneys and witnesses in the trial. The attorneys can work together to decide who will conduct the various parts of their case. These students can work with the witness to whom they are assigned, or work separately if they are assigned an

opening or closing statement. During the preparation the attorneys for each team must closely coordinate their opening and closing statements and the testimony of each witness.

Following is a chart outlining possible tasks to which students can be assigned during mock trial preparation:

PROSECUTION/PLAINTIFF'S TEAM	DEFENSE TEAM
Task	Task
a. development of opening statement	a. development of opening statement
b. formulation of questions for direct examination of prosecution/plaintiff witness #1 and consideration of possible questions the defense will ask this witness on cross-examination	b. formulation of questions for direct examination of defense witness #1 and consideration of possible questions the prosecution/plaintiff will ask this witness on cross-examination
c. formulation of questions for direct examination of prosecution/plaintiff witness #2 and consideration of possible questions the defense will ask this witness on cross-examination	c. formulation of questions for direct examination defense witness #2 and consideration of possible questions the prosecution/plaintiff will ask this witness on cross-examination
d. formulation of questions for cross-examination of defense witness #1.	d. formulation of questions for cross-examination of prosecution/plaintiff witness #1
e. formulation of questions for cross-examination of defense witness #2	e. formulation of questions for cross-examination of prosecution/plaintiff witness #2
f. development of closing statement	f. development of closing statement

5. Key points about which to remind students

   a. All participants should speak loudly and clearly. Practice this by having each student attorney stand at the far end of the room while interrogating the student witness;

   b. As soon as possible, student attorneys should begin formulating questions for use in examination of witnesses, and student witnesses should rehearse their testimony; student preparation will progress more rapidly by simulating actual conduct of the trial than by merely conducting general classroom discussion of the steps in the trial;

c. Leading questions are not allowed on direct examination, but can and should be asked on cross-examination;

d. Courtroom etiquette and decorum should be stressed at practice and observed at trial (e.g., standing when addressing the court, calling the judge "Your Honor," etc.);

e. Cross-examination should be short and to the point; questions on cross-examination are designed to elicit a particular response from the witness; asking open-ended questions which call for a narrative or explanation (e.g., "how," "why," or "could") may result in testimony which is unexpected and harmful to the cross-examiner's case;

f. Each attorney should be prepared for interruptions from the judge on matters such as the relevance of questions, or the rationale of the arguments during the closing statement;

g. The witness statements should not be read verbatim in the trial; they serve merely as a point of departure for oral testimony; however, testimony must not be inconsistent with facts set forth in the witness statements.

6. Preparation of judge or judges

Students or other persons such as a visiting lawyer, the school principal, a teacher, or a real judge may be selected to play the role of judge, or judges if you wish to have more than one. (Some cases are actually heard by three-judge courts.) Judges should be given the facts of the case but not the witness statements. The judge(s) should be familiar with the steps in the trial, the role of the judge during the trial, basic rules of evidence, and the applicable law in the case.

7. Preparation of the jury

If the teacher is having the entire class participate in trial preparation, students from another class or outsiders may constitute the jury. The jury should not be allowed to read the statement of facts or witness statements prior to the trial in order to avoid predisposition and to simulate more precisely an actual trial.

8. Preparation of trial observers

All students who observe the trial should be provided with an explanation of what is to occur and, if possible, briefed on the steps in a trial. They should be instructed to take notes concerning what they see, to write down questions for the subsequent debriefing and to decide the case as if they were on the jury.

9. Debriefing following the mock trial

No simulated legal proceeding is complete without a thorough and thoughtful debriefing session. Debriefing enables both students and teachers to identify and discuss issues of substantive law and procedure, as well as student perceptions and feelings. The debriefing for a mock trial should include the following questions:

a. Who emerged as the dominant characters in the courtroom? How did they affect the outcome of the case?

b. Is the manner in which the attorneys plan and argue their cases influenced by whether the case is heard solely by a judge or by a judge or jury? Would a different trier of fact (i.e., a jury if the case was before a judge only) have reached a different verdict?

c. Was justice served by the trial process? Were there weak spots in the process (e.g., rules unfairly constructed or applied, an ill-prepared attorney, lying witness, biased jury)?

d. What strategies did the attorneys employ for their respective cases? Were they proper for the case? Might they have tried different strategies or arguments?

e. Are the reasons clear for the verdict rendered by the trier of fact? Are there grounds for an appeal?

Many of the steps set forth above regarding mock trial preparation are applicable to other simulated legal proceedings, with certain modifications. Parts B and C below outline the modifications for appellate and administrative hearings.

B. Appellate Hearings

1. Preparation for an appellate hearing

a. Explain to the class the nature of an appellate hearing; how it fits into the legal system; the basis on which a trial court decision may be appealed to a higher court; how an appellate proceeding differs from a trial;

b. Distribute the facts of the case and the results of the lower court; discuss the case with the class to set a general perspective;

c. Choose students to play roles including:

(1) a panel of judges;

(2) attorneys for the appellant (person bringing the appeal) and attorneys for the appellee (party opposing the appeal);

d. Have the role players meet in their role groups;

(1) Judges should review the facts and lower court decision and clarify for themselves the main issue in the case; they should draft questions to ask each party;

(2) the attorneys for each party should meet among themselves and

(a) draft short "briefs" portions of which they will be able to read to the judges; these briefs should state why the lower court decision should be overruled (appellant) or why the lower court decision should remain unchanged (appellee);

(b) try to anticipate the kinds of questions the judges might ask.

2. Debriefing following an appellate hearing

a. Did the attorneys for each party correctly identify the issues involved in this appeal?

b. Did the attorneys for the appellant clearly state the reasons why they believed the lower court decision had to be overruled?

c. Did the attorneys for the appellee effectively anticipate and rebut the arguments of the appellant?

d. Did the judge's questions reveal a clear understanding of the issues involved in the case?

e. Did the judge's questions help or hinder the direction of the oral argument?

f. Was the judge's opinion clearly stated? Was it in line with current legal precedent?

g. Did the attorneys for each party correctly and effectively identify and refer to other decisions (precedents) in order to support their position?

C. Administrative Hearings

1. Prepraration for an administrative hearing

a. Decide which type of administrative hearing you want to enact;

b. Select or draft an appropriate set of facts (agencies or attorneys in your town may be willing to assist you with this);

c. Distribute the facts to the class; have the class identify the sort of case involved; discuss the facts with the class;

d. Appoint students to play roles including:

(1) a panel of hearing examiners;

(2) individual representatives of the parties involved;

(3) attorneys for each of the parties;

(4) other witnesses as appropriate;

e. Have the students meet in their role groups to discuss how they intend to proceed.

(1) The hearing examiners should try to identify the primary issues involved; they should draft some questions based on the facts they already know;

(2) The parties should draft statements explaining their sides of the case; attorneys assist in this process; attorneys should advise the parties of questions the examiners might ask; attorneys should also discuss whether and how to cross-examine the opposing party.

2. Debriefing following an administrative hearing

The debriefing exercise after the mock administrative hearing should include questions such as these:

a. What was the purpose of the hearing? Was this purpose clear in the way the hearing was conducted?

b. What were the main issues in this hearing?

c. Were all sides of the debate clearly represented?

d. Did the panel of examiners show they understood the debate by the nature of the questions they asked? Did they tend to favor any particular side? Did they fail to ask any important questions?

e. In their deliberations after the hearing, did the examiners discuss all issues? Were the reasons for their decision clearly stated?

SIMPLIFIED RULES OF EVIDENCE*

In American trials, elaborate rules are used to regulate the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that both parties receive a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial.

Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of this mock trial competition, the rules of evidence have been modified and simplified below.

A. Witness Examination

1. Direct examination (attorneys call and question witnesses)

   a. Form of questions: Witnesses may not be asked leading questions by the attorney who call them. A leading question is one that suggests to the witness the answer desired by the examiner, and often suggests a "yes" or "no" answer. Director questions generally are phrased to evoke a narrative answer.

      Example of a direct question: "Mr. Bryant, when did you first meet Angela?"

      Example of a leading question: "Mr. Hayes, isn't it true that you dislike Darryl Bryant?"

   b. Scope of witness examination: (limited by rules of evidence explained in Part B, 3).

   c. Character: For mock trial purposes, evidence about the character of a party may not be introduced unless the person's character is an issue in the case. For example, whether one spouse has been unfaithful to another is a relevant issue in a civil trial for divorce, but is not an issue in a criminal trial for larceny. Similarly, a person's violent temper may be relevant in a criminal trial for assault, but is not an issue in a civil trial for breach of contract.

   d. Refreshing Recollection: If a witness is unable to recall a statement made in the affidavit, or if the witness con-

*These rules were provided by National Street Law Institute, 605 G Street, N.W., Washington, D.C. 20001, and were used in conjunction with its 1979 Mock Trial Competition.

tradicts the affidavit, the attorney on direct may seek to introduce that portion of the affidavit that will help the witness to remember. (See Part B, 4, on introduction of evidence.)

2. Cross-examination (questioning of the other side's witnesses)

a. Form of questions: An attorney may ask leading questions when cross-examining the opponent's witnesses. Questions tending to evoke a narrative answer should be avoided.

Example of a leading question: "Mrs. Bryant, didn't you consider marrying George Hayes?"

b. Scope of witness examination: In Missouri, attorneys are not limited in their questioning to matters brought out by the other side on direct examination. They may ask questions relating to any relevant matter, including matters relating to the credibility of witnesses.

Example: Even if the plaintiff in a car accident case never mentions damages to the car, the defense may ask questions on cross-examination about the repair costs.

c. Impeachment: On cross-examination, the attorney may want to show the court that the witness should not be believed. This is called impeaching the witness. It may be done by asking questions about prior conduct that makes the witness' credibility (truth-telling ability) doubtful. Other times, it may be done by asking about evidence of certain criminal convictions. Impeachment may also be done by introducing the witness' affidavit, and asking the witness whether he or she has contradicted something which was stated in the affidavit.

Example (Prior Conduct): "Is it true that you often hit children when they cry too much?"

Example (Past Conviction): "Is it true that you were convicted of armed robbery?"

(NOTE: These types of questions may only be asked when the questioning attorney has information that indicates that the conduct actually happened.)

3. Re-direct examination

If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be limited to the damage the attorney thinks has

been done and should be phrased so as to try to "save" the witness' truth-telling image in the eyes of the court. Re-direct examination is usually limited to issues raised by the attorney on cross-examination.

B. Additional Rules of Evidence

1. Hearsay

Any evidence of a statement made by someone who is not present in the court which is offered to prove the truth of a fact, a piece of evidence or any witness' testimony is hearsay and not permitted.

Example: Jessica Hayes says, "I heard that Darryl Bryant has a criminal record."

Though hearsay is not usually allowed at a trial, a judge may sometimes allow it if:

a. it was said by a party in the case and contains evidence which goes against their side (e.g., in a murder case, the defendant told someone he committed the murder). This is sometimes called the "Admission against Interest" Exception; or

b. a person's state of mind is an important part of the case and the hearsay consists of evidence of what someone said which described that person's state of mind (sometimes called "State of Mind" Exception).

2. Witness Opinions

As a general rule, witnesses may not give opinions. Certain witnesses who have special knowledge or qualifications may be qualified as "experts." An expert must be qualified by the attorney for the party for which the expert is testifying; this means that before an expert can be asked an expert opinion, the questioning attorney must bring out the expert's qualifications and experience.

All witnesses may give opinions on what they saw and heard at a given time, if such opinions are relevant to the facts in issue and helpful in explaining their story.

3. Lack of Personal Knowledge: A witness may not testify to any matter of which the witness has no personal knowledge.

Example: If Jessica Hayes has never seen Angela Bryant with the baby, Jessica would not be able to say, "Angela is a terrible mother."

4. Relevance of Evidence

Generally, only relevant testimony and evidence may be presented. This means that the only physical evidence and testimony allowed is that which tends to make a fact which is important to the case more or less probable than the fact would be without the evidence. However, if the relevant evidence is unfairly prejudicial, may confuse the issues, or is a waste of time, it may be excluded by the court. This may include testimony, pieces of evidence and demonstrations that have no direct bearing on the issues of the case, or have nothing to do with making the issues clearer.

Example: The defense asks Mrs. Hayes on cross-examination, "How old are you?" (This question is permitted only if her age is relevant to the case.)

5. Introduction of Physical Evidence

There is a special procedure for introducing physical evidence during a trial. The physical evidence must be relevant to the case and the attorney must be prepared to defend its use on that basis. Below are the basic steps to use when introducing a physical object or document into evidence in a court.

a. "Your honor, I ask that this letter be marked for identification as Petitioner's Exhibit A." (Show letter and hand to bailiff for marking.)

b. (Show letter to opposing counsel, who may make an objection to the offering at this time.)

c. (Show letter to witness.) "Mr. King, do you recognize this document which is marked Petitioner's Exhibit A for identification?" (The witness explains what it is.)

d. "Your honor, I offer this letter for admission into evidence as Petitioner's Exhibit A, and ask the court to so admit it."

e. Get ruling from court on admission and proceed to use the letter or you can ask the witness a series of questions about the letter, and then ask the court to admit it.

C. Objections

An attorney can object any time the opposing attorneys have violated the rules of evidence. The attorney wishing to object should stand up and do so at the time of the violation. When an objection is made, the judge will ask the reason for it. Then the judge will turn to the attorney who asked the question, and that attorney usually will have a chance to explain why the objection should not be accepted ("sustained") by the judge. The judge will then decide whether a question or answer must be discarded, because it has violated a rule of evidence ("ob-

jection sustained"), or whether to allow the question or answer to remain on the trial record ("objection overruled").

Following are standard objections:

1. Irrelevant evidence: "I object, your honor. This testimony is irrelevant to the facts of this case."

2. Leading questions: "Objection. Counsel is leading the witness." (Remember, this is only objectionable when done on direct examination.)

3. Improper character testimony:

   a. "Objection. The witness' character or reputation has not been put in issue."

   b. "Objection. Only the witness' reputation/character for truthfulness is at issue here."

4. Hearsay: "Objection. Counsel's question/the witness' answer is based on hearsay." (If the witness makes a hearsay statement, the attorney should also say, "and I ask that the statement be stricken from the record.")

5. Opinion: "Objection. Counsel is asking the witness to give an opinion."

6. Lack of personal knowledge: "Objection. The witness has no personal knowledge that would enable him to answer this question."

INSTRUCTION NO. 1

Justice requires that you not make up your mind about the case until all of the evidence has been seen and heard. You must not comment on or discuss what you may hear or learn in the trial until the case is concluded and you retire to the jury room for your deliberations. During the trial, you should not remain in the presence of anyone who is discussing the case when the court is not in session. Otherwise, some outside influence or comment might influence a juror to make up his or her mind prematurely and be the cause of a possible injustice. For this reason, the lawyers and their clients are not permitted to talk with you until the trial is completed.

When you enter into your deliberations, you will be considering the testimony of witnesses as well as other evidence to which I have referred. In considering the weight and value of the testimony of any witness, you may take into consideration the appearance, attitude, and behavior of the witness, the interest of the witness in the outcome of the case, the relation of the witness to any of the parties, the inclination of the witness to speak truthfully or untruthfully, and the probability or improbability of the witness' statements. You may give the testimony of any witness such weight and value as you believe that testimony is entitled to receive.

There will be some matters which will be offered by the parties and to which objections will be made. If I overrule the objections, you may consider that matter when you deliberate on the case. If I sustain an objection, then that matter and any matter I order to be stricken is excluded and must not be considered by you in your deliberations.

INSTRUCTION NO. 2

This instruction and other instructions which I will read to you near the end of the trial are in writing, and all of the written instructions will be handed to you for guidance in your deliberation when you retire to the jury room. They will direct you concerning the legal rights and duties of the parties and how the law applies to the facts which you will be called upon to decide.

The trial may begin with opening statements by the lawyers as to what they expect the evidence to be. At the close of the evidence, the lawyers may make arguments on behalf of their clients. Neither what is said in opening statements or in closing arguments is to be considered as proof of a fact. However, if a lawyer admits some fact on behalf of his client, the other party is relieved of the responsibility of proving that fact.

After the opening statements, the plaintiff will introduce evidence. After that, the defendant may introduce evidence and there may be rebuttal evidence after that. The evidence may include the testimony of witnesses who appear personally here in court, the testimony of witnesses who may not appear personally but whose testimony may be read to you, and exhibits such as pictures, documents, and other objects.

While the trial is in progress, I may be called upon to determine questions of law and to decide whether these matters may be considered by you under the law. No ruling or remark which I may make at any time during the trial will be intended or should be considered by you to indicate my opinion as to the facts. There may be times when the lawyers come up to talk to me out of your hearing. This will be done in order to permit me to decide questions of law. These conversations will be out of your hearing to prevent issues of law, which I must decide, from becoming mixed with the issues of fact, which you must decide. We will not be trying to keep secrets from you.

After all of the evidence has been presented, and you have received my final instructions and heard the closing arguments of the lawyers, you will retire to the jury room for your deliberations. At that time, it will be your duty to select a foreman, to decide the facts, and to arrive at a verdict.

INSTRUCTION NO. 3

The court does not mean to assume as true any fact referred to in these instructions but leaves it to you to determine what the facts are.

INSTRUCTION NO. 4

The burden is upon plaintiff to cause you to believe the propositions necessary to support his claim against defendant. In determining whether or not you believe any proposition, you must consider only the evidence and the reasonable inferences derived from the evidence. If the evidence in the case does not cause you to believe a particular proposition submitted or if you are unable to form a belief as to any such proposition, then you cannot return a verdict requiring belief of that proposition.

INSTRUCTION NO. 5

If you find the issues in favor of plaintiff then you must award the plaintiff such sum as you may find from the evidence will fairly and justly compensate plaintiff for deprivation of possession of the property from the date defendant had notice of plaintiff's claim to possession to the date of your verdict.

INSTRUCTION NO. 6

Your verdict must be for plaintiff if you believe:

First, defendant was in possession of the premises claimed by plaintiff on _____, 19__, and;

Second, plaintiff had the right to possession of the premises on that date by reason of termination of month-to-month tenancy.

INSTRUCTION NO. 7

You are instructed that nine or more jurors may return a verdict for either party in this case. If all of you agree upon a verdict, your foreman alone will sign it, but if your verdict is returned by nine, or more, and less than twelve jurors, your verdict must be signed by all of the jurors who agree to it.

FORMS OF VERDICT

If all of you agree upon a verdict in favor of the plaintiff, it may be in the following form:

"We, the jury, find the issues in favor of the plaintiff, and assess plaintiff's damages at $_____(stating the amount).

_____
Foreman"

If all of you agree upon a verdict in favor of the defendant, it may be in the following form:

"We, the jury, find the issues in favor of the defendant.

_____
Foreman"

If less than twelve jurors return a verdict, you should begin your verdict with the words:

"We, the undersigned jurors, find," etc.,

instead of "We, the jury, find," etc.

THESE FORMS ARE GIVEN FOR GUIDANCE ONLY AND YOUR VERDICT SHOULD BE WRITTEN ON A SEPARATE PAPER, AND NOT ON ONE OF THESE INSTRUCTIONS.

VERDICT

W. B. Walker,

Plaintiff

vs.

Cynthia Jones,

Defendant.

October Term, 1979

Case No. CV179-510CC

We, the Jury, find _____

_____

_____

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Foreman

VERDICT

W. B. Walker,

Plaintiff

vs.

Cynthia Jones,

Defendant.

October Term, 1979

Case No. CV179-510CC

We, the undersigned jurors, find _____

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Foreman